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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,099	04/11/2001	Gregory J. Speicher	935-012	1374
32376	7590	06/10/2008		
LAWRENCE R. YOST 2001 Ross Avenue Suite 3000 DALLAS, TX 75201			EXAMINER PHUNKULI, BOB A	
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			2619	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/833,099

**Applicant(s)**

SPEICHER, GREGORY J.

**Examiner**

BOB A. PHUNKULH

**Art Unit**

2619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 March 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3 and 5-26 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 3 and 5-26 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This communication is in response to applicant's 03/07/2008 request for pre-appeal conference in the application of **SPEICHER** for "**INTERNET-AUDIOTEXT ELECTRONIC ADVERTISING SYSTEM WITH PSYCHOGRAPHIC PROFILING AND MATCHING**" filed 04/11/2001. The amendment/response to the claims have been entered. No claims have been canceled. No claims have been added. Claims 3-26 are now pending.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 5-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over *LUPIEN* et al. (US 5,689,652), hereinafter *LUPIEN*, in view of *CHATER* et al. (US 5,598,351), hereinafter *CHATER*.

Regarding claims 3, 9, *LUPIEN* discloses a method for a computer comprising the steps of:

administering to a first user a first test via the Internet (see col. 5 lines 36-45) where the first test (as shown in figure 4, there are many visual images i.e. 50-59, 40-46, etc.);

storing the first user's preferences and generating a profile of the first user according to the visual preferences of the first user (storing the buyer profile in the data base 4, see figure 1);

administering to a second user a second test via the Internet (see figure 4 for seller);

generating a profile of the second user according to the results of the second test (storing the seller profile in the data base 4, see figure 1);

comparing the profile of the first user to the profile of the second user; and  
matching the first user with the second user according to visual preferences,  
whenever the profile of the first user matches the profile of the second user (see col. 4 lines 10-26)

*LUPIEN* fails to explicitly disclose presenting a set of at least two visual images or video to the first user and receiving the first user's preference based on the visual image or video.

*CHATER*, on the other hand, discloses providing visual images/ video images to the user in on-line dating communication system (see col. 1 lines 24-46).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention was made including the teaching of *CHATER* especially providing the video images in the user's terminal in the system taught by *LUPIEN* in order to provides potential user's i.e. employer or the opposite sex in on-line dating service with ability to better screen potential employee or mate.

Regarding claim 10, *LUPIEN* discloses the matching occurs with a partial match of the first and second's user's preferences (degree of mutual satisfaction, see col. 4 lines 17-26).

Regarding claims 4-8, *LUPIEN-CHATER* fails to disclose that the notifying/contacting the first user via email or telephone.

However, it would have been obvious to one having ordinary skill in the art at the time of invention was made to notify the first user via e-mail or telephone (widely available and used means of communication method) in order to provides information to the buyer/seller with whether the order has been executed.

Regarding claims 11, 17, *LUPIEN* discloses a method for a computer comprising the steps of:

administering to a first user a first test via the Internet (see col. 5 lines 36-45) where the first test (as shown in figure 4, there are many visual images i.e. 50-59, 40-46, etc.);

storing the first user's preferences and generating a profile of the first user according to the visual preferences of the first user (storing the buyer profile in the data base 4, see figure 1);

administering to a second user a second test via the Internet (see figure 4 for seller);

generating a profile of the second user according to the results of the second test (storing the seller profile in the data base 4, see figure 1);

comparing the profile of the first user to the profile of the second user; and  
matching the first user with the second user according to visual preferences,  
whenever the profile of the first user matches the profile of the second user (see col. 4  
lines 10-26)

*LUPIEN* fails to explicitly disclose presenting a set of at least two visual images  
or video to the first user and receiving the first user's preference based on the visual  
image or video.

*CHATER*, on the other hand, discloses providing visual images/ video images to  
the user in on-line dating communication system (see col. 1 lines 24-46).

Therefore, it would have been obvious to one having ordinary skill in the art at  
the time of invention was made including the teaching of *CHATER* especially providing  
the video images in the user's terminal in the system taught by *LUPIEN* in order to  
provides potential user's i.e. employer or the opposite sex in on-line dating service with  
ability to better screen potential employee or mate.

Regarding claim 18, *LUPIEN* discloses the matching occurs with a partial match  
of the first and second's user's preferences (degree of mutual satisfaction, see col. 4  
lines 17-26).

Regarding claims 12-16, *LUPIEN-CHATER* fails to disclose that the  
notifying/contacting the first user via email or telephone.

However, it would have been obvious to one having ordinary skill in the art at the time of invention was made to notify the first user via e-mail or telephone (widely available and used) in order to provides information to the buyer/seller with whether the order has been executed.

Regarding claims 19, 25, *LUPIEN* discloses a method for a computer comprising the steps of:

- administering to a first user a first test via the Internet (see col. 5 lines 36-45) where the first test (as shown in figure 4, there are many visual images i.e. 50-59, 40-46, etc.);

- storing the first user's preferences and generating a profile of the first user according to the visual preferences of the first user (storing the buyer profile in the data base 4, see figure 1);

- administering to a second user a second test via the Internet (see figure 4 for seller);

- generating a profile of the second user according to the results of the second test (storing the seller profile in the data base 4, see figure 1);

- comparing the profile of the first user to the profile of the second user; and

- matching the first user with the second user according to visual preferences, whenever the profile of the first user matches the profile of the second user (see col. 4 lines 10-26)

*LUPIEN* fails to explicitly disclose presenting a set of at least two visual images or video to the first user and receiving the first user's preference based on the visual image or video.

*CHATER*, on the other hand, discloses providing visual images/ video images to the user in on-line dating communication system (see col. 1 lines 24-46).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention was made including the teaching of *CHATER* especially providing the video images in the user's terminal in the system taught by *LUPIEN* in order to provides potential user's i.e. employer or the opposite sex in on-line dating service with ability to better screen potential employee or mate.

Regarding claim 26, *LUPIEN* discloses the matching occurs with a partial match of the first and second's user's preferences (degree of mutual satisfaction, see col. 4 lines 17-26).

Regarding claims 20-24, *LUPIEN-CHATER* fails to disclose that the notifying/contacting the first user via email or telephone.

However, it would have been obvious to one having ordinary skill in the art at the time of invention was made to notify the first user via e-mail or telephone (widely available and used) in order to provides information to the buyer/seller with whether the order has been executed.



### ***Response to Arguments***

Applicant's arguments filed 3/07/2008 have been fully considered but they are not persuasive.

In page 2, the applicant's made the following argument:

Referring specifically to independent Claim 3, the Applicant respectfully asserts that Claim 3 includes the method step of "administering to a first set of users a first test via the Internet where said first test includes presenting a set of at least two visual images to said first user and receiving said first user's preferences based on said visual images," and that Lupien and Chater fail to render at least this element obvious.

In response to the applicant's argument, *LUPIEN* discloses a system for trading stocks over a WAN or Internet (see col. 3 lines 35-46, and figure 1). The system includes trader terminals 10, 12, 14, where each terminal includes a graphical user interface (GUI) that allows users to filled out a form to collect user's preferences such as type of transactions type, stock's symbol, quantity, prices rages, etc...(see figures 1 and 4). Once the necessary fields in the form are completed, the user submit the form and the system generate a profile based on the type of the transactions. Thus, *LUPIEN* discloses the claimed subject matter "administering to a first set of users a first test via the internet and receiving the first user's preferences" as set forth in the previous office action.

*CHATER* discloses a communication system for effecting social introductions between members of the opposite sex (see col. 1 lines 1-10). The system includes terminal for recording/viewing/selecting recorded images or videos, and a data network for transmitting the images or videos to the other terminals (see col. 1 lines 24-46, and col. 2 lines 1-33).

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Therefore, the combination of *LUPIEN-CHATER* discloses the claimed subject matter.

In page 4, the applicant made the following argument:

Furthermore, since Lupien fails to disclose "receiving the first user's preference based on the visual image or video," as stated by the Examiner, Lupien cannot render obvious the Claim 3 step of "generating a profile of said first user according to the visual \ preference of said first user." Without gathering the visual preference of the first user by "receiving the first user's preference based on the visual image or video," Lupien has no "visual preference of said first user" useful for "generating a profile of said first user according to the visual preference of said first user." Therefore, it would be impossible for the system taught by Lupien to base a user profile on visual preferences. Likewise, Chater fails to disclose the generation of any sort of user profile based On visual preferences. Instead, Chater merely discloses showing a user video of visual images. Chater makes no mention of generating a user profile based on visual preferences (emphasis added).

In *LUPIEN*, the central matching controller 2 receives the inputs from the user's terminal and generate profiles (see figure 1; step 104 or 106, see figure 8).

Also, in *CHATER*, the terminal includes means for displaying images and selecting the images (see col. 1 lines 47-61), and the selected image or video is received by the master operating system 34 (see figure 1).

Therefore, the combination of *LUPIEN-CHATER* disclose the claimed subject matters "receiving the first user's preference based on the image or video" and "generating a profile of the said first user according to the visual/preference of the first user."

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any response to this action should be mailed to:

The following address mail to be delivered by the United States Postal Service (USPS) only:

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Bob A. Phunkulh** whose telephone number is **(571) 272-3083**. The examiner can normally be reached on Monday-Tuesday from 8:00 A.M. to 5:00 P.M. (first week of the bi-week) and Monday-Friday (for second week of the bi-week).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor **Jay Patel**, can be reach on **(571) 272-2988**. The fax phone number for this group is **(571) 273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Bob A. Phunkulh/  
Primary Examiner, Art Unit 2619